

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NYLES LA WAYNE WATSON,

Plaintiff,

No. CIV S-02-1777 RRB EFB P

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER

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Plaintiff is a prisoner, without counsel, prosecuting this civil rights action in forma pauperis. *See* 42 U.S.C. § 1983; 28 U.S.C. § 1915. The action proceeds on plaintiff's January 14, 2003, third-amended complaint. As noted below, all named defendants other than Dr. Johnson have been dismissed from this action by order granting their motion for summary judgment, filed September 13, 2005. After several admonitions that defendant Dr. Johnson must be served within the time prescribed by Fed. R. Civ. P. 4(m), as well as several extensions of time to do so, plaintiff has still failed to complete service of process.

On September 10, 2003, process was returned unexecuted because defendant Charles Johnson had retired and could not be located. On September 17, 2003, the court directed plaintiff to discover defendant Johnson's whereabouts and gave him time to submit papers to again attempt service of process on defendant Johnson. On August 17, 2005, the court issued an

1 order to show cause why defendant Johnson should not be dismissed. Plaintiff responded on
2 August 23, 2005, and the order to show cause was discharged. However, plaintiff again failed to
3 submit documents for service and, once again, the court issued an order to show cause.

4 Plaintiff finally responded with additional information on March 24, 2006, and on April
5 19, 2006, the court directed the United States Marshal to serve process on defendant Johnson.
6 On September 14, 2006, service was returned because defendant Johnson had retired from the
7 Department of Corrections and joined an unknown monastery under a vow of silence. On
8 September 29, 2006, the court again directed plaintiff to discover defendant Johnson's
9 whereabouts and gave him time to submit papers to further attempt service of process on
10 defendant Johnson.

11 Service of process must be effected within 120 days of the filing of the complaint unless
12 plaintiff demonstrates good cause. Fed. R. Civ. P. 4(m). The court has given plaintiff no fewer
13 than four opportunities to locate defendant Johnson and warned plaintiff that if this defendant is
14 not served the action would be dismissed with respect to him. More than 12 months have passed
15 since the order issued and plaintiff has failed to comply or show good cause for his failure to do
16 so.

17 Accordingly, the court recommends that this action be dismissed as to the sole remaining
18 defendant, Dr. Johnson, for failure to complete service as required by Fed. R. Civ. P. 4(m), as
19 well as failure to prosecute and failure to comply with the court's order. Fed. R. Civ. P. 41(b);
20 Local Rule 11-110.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
23 after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned
25 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
26 within the specified time may waive the right to appeal the District Court's order. *Turner v.*

1 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

2 Dated: October 10, 2007.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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